

Office of Chief Counsel
Internal Revenue Service

memorandum

CC:LM:NR:HOU:1AUS:TL-N-3052-01
DHDelgado

date: **AUG 27 2001**

to: Territory Manager, LMSB/CTM 1306
Attn: Jim Moren, Team Manager

Stop 4124AUNW

from: Area Counsel
(Natural Resources:Austin)

Stop 2000AUS

subject: **Earliest Statute of Limitations:**

This memorandum responds to your request for legal advice dated August 20, 2001. As you know, you requested that we advise you as to how you should complete the Transferee Agreements (Forms 2045) when you are uncertain whether [REDACTED] transferred its assets (namely its interest in the [REDACTED] Recovery Partnership) directly to its shareholders or to the [REDACTED] Liquidating Trust (Liquidating Trust). You stated that you do not want to rely on the taxpayer's representative statement of how the assets were distributed; that you would rather have executed Forms 2045 to cover both scenarios. You plan to meet with the taxpayer's representative on [REDACTED], and provide him with the completed Forms 2045 ready for the signatures of the [REDACTED] largest shareholders (who are also the [REDACTED] largest beneficiaries of the Liquidating Trust). You have already advised the taxpayer's representative that he must return all the executed Forms 2045 by [REDACTED], or you will have no choice but to forward this case to the review staff for issuance of a statutory notice of deficiency to [REDACTED]. The imminent statute date compels this short timetable. Because you cannot delay your meeting with the taxpayer's representative, we are submitting our advice to the National Office for post-review.

DISCLOSURE STATEMENT

This writing may contain privileged information. Any unauthorized disclosure of this writing may have an adverse affect on privileges, such as the attorney client privilege. If disclosure becomes necessary, please contact this office for our views.

FACTS

(), and () were plaintiffs in a lawsuit against () that was filed in . On , , and entered into an agreement (/ / Recovery Partnership) about how their respective interests in the lawsuit against would be managed and how any potential damage award or settlement recovery would be distributed among the partners.

The first trial was held in . The jury awarded \$ to and . In , the Court of Appeals reversed and remanded the case back to the district court for a new trial. . In , a second trial resulted in a \$ judgment against . appealed.

While 's appeal to the Court of Appeals was pending, and entered into a settlement agreement with in . Under the terms of the settlement, paid and an initial lump sum of \$ of compensatory damages and interest. also agreed to pay an additional contingent payment not to exceed \$ plus simple interest at % based on the outcome of all appeals. On , received \$, its share of the initial settlement amount after attorney's fees.

On , the Court of Appeals sustained the entire jury verdict against . appealed to the Supreme Court.

On , adopted a plan of complete liquidation. All its assets and liabilities were eventually distributed to the Liquidating Trust. You are uncertain whether 's assets were distributed first to its shareholders who then contributed them to the Liquidating Trust in exchange for beneficial interests in the trust. In your , request for advice, you quote portions of the corporate resolution concerning the transfer of assets from and 's dissolution. The portions of this document entitled "Action by Written Consent In Lieu of Meeting of the Board of Directors of " contained in your request are ambiguous with respect to whether will distribute its assets to its shareholders or the Liquidating Trust. On , filed a "Certificate of Dissolution."

On [REDACTED], the [REDACTED] Supreme Court denied the appeal of the determination of the lower court. On [REDACTED], [REDACTED] paid an additional \$ [REDACTED] to [REDACTED] and [REDACTED] under the settlement agreement.

The Liquidating Trust was to hold the assets on behalf of the beneficiaries/corporate shareholders, convert them to cash, and then distribute the cash and remaining assets to the beneficiaries. Under the trust agreement, the Liquidating Trust was barred from conducting any business of any nature other than the collection, disposition, and distribution of the trust estate. The only asset received by the Liquidating Trust was the taxpayer's interest in [REDACTED]/[REDACTED] Recovery Partnership. This partnership's only asset was its outstanding lawsuit recovery.

[REDACTED], [REDACTED], and [REDACTED] executed an Amended and Restated General Partnership Agreement of [REDACTED]/[REDACTED] Recovery Partnership effective [REDACTED]. Under the terms of the amended and restated partnership agreement, [REDACTED] and Liquidating Trust were to receive a combined profit share of [REDACTED] percent. You believe that [REDACTED] did not report a capital gain on its entire [REDACTED] percent of the recovery, as a large portion of its recovery was paid to the Liquidating Trust. We advised you in an earlier memorandum that section 336(a) would apply so that the liquidating corporation ([REDACTED]) would recognize gain or loss on the distribution of property in complete liquidation as if such property were sold to the distributee at its fair market value. You are in the process of retaining an expert who can appraise the fair market value of the property (namely, its interest in the lawsuit) [REDACTED] distributed at the time of the distribution.

ANALYSIS

Since [REDACTED] has dissolved and the 3-year wind-up period usually available to corporations has passed, its statute of limitations on assessment cannot be extended by consent. You have determined that [REDACTED] is inactive and has no assets. The recipients of [REDACTED]'s property are liable as transferees of [REDACTED]'s corporate income tax liability up to the fair market value of the property they received. I.R.C. § 6901(a)(1)(A)(i). The period of limitations for assessment of any such liability of an initial transferee is within one year after the expiration of the period of limitation for assessment against the transferor. I.R.C. § 6901(c)(1). In the case of the liability of a transferee of a transferee, the period of limitations for assessment is within one year after the expiration of the period of limitation for assessment against the preceding transferee, but not more than three years after the expiration of the period of limitation for assessment against the initial transferor. I.R.C. § 6901(c)(2).

By executing a Transferee Agreement (Form 2045), the recipients of [REDACTED]'s property acknowledge that they are transferees of [REDACTED]. If you can obtain Forms 2045 from all the transferees of [REDACTED], then, as stated on the Form 2045, the Internal Revenue Service would not issue a statutory notice of deficiency against the transferor. Because the Liquidating Trust is no longer a viable entity under state law, we do not recommend that you obtain an executed Form 2045 for the Liquidating Trust, because we doubt that anyone is authorized to act for that entity at this time.

You have indicated that you intend to request that the largest [REDACTED] shareholders of [REDACTED] execute Forms 2045, as the largest shareholders represent approximately [REDACTED]-percent in interest of [REDACTED] and the next largest shareholder is a pass-through entity with over [REDACTED] owners. (The taxpayer's representative has also expressed confidence in obtaining signatures from the [REDACTED] largest shareholders on the Forms 2045.) We are of the opinion that this decision is properly your business decision. You may also make a business decision not to issue a statutory notice of deficiency to the corporation in the event you have executed Forms 2045 from all of the [REDACTED] largest shareholders. You would then have an additional year to seek an agreement from the transferees with respect to the amount of [REDACTED]'s income tax liability for its tax year ending [REDACTED]. In the event you cannot reach an agreement with the [REDACTED] transferees, then the Internal Revenue Service should issue a transferee notice of deficiency to all transferees before [REDACTED].

You provided us with several possible ways to complete the Forms 2045 for shareholder [REDACTED]. We are of the opinion that the attached two proposed Forms 2045 (pages 8 and 10 from your ten-page request for advice faxed to us on [REDACTED]) are the correct versions of the form. First, the simple version (page 8) that shows no intervening transfer from [REDACTED] to [REDACTED] would be the Transferee Agreement (Form 2045) appropriate in the event that [REDACTED] distributed its assets directly to the shareholders. Second, the version (page 10) that indicates (both after the identification of the tax year and in the comment at the bottom of the form) that [REDACTED] was the initial transferor and that [REDACTED] was the transferee of the Liquidating Trust (the first transferee) would be the appropriate Transferee Agreement (Form 2045) in the event [REDACTED] distributed its assets to the Liquidating Trust. The only change we recommend to this second version is placing an asterisk after the name of the transferor and before the comment at the bottom of the page. Of course, similar Forms 2045 should be completed for the other [REDACTED] shareholders/beneficiaries.

CONCLUSION

In the event you obtain executed Forms 2045 from the [REDACTED] largest shareholders of [REDACTED], you can decide not to issue a statutory notice of deficiency to [REDACTED]. We recommend that you use the attached two versions of the Form 2045 for each shareholder, as you are uncertain whether [REDACTED] distributed its assets directly to its shareholders or to the Liquidating Trust. In the event you do not obtain appropriate executed Forms 2045 from the four largest shareholders, we recommend that a statutory notice of deficiency be issued to [REDACTED] for its income tax liability for the tax year ending February 28, [REDACTED].

If you have any questions, please contact the undersigned at (512) 499-5901.

MARION S. FRIEDMAN
Associate Area Counsel
(Large and Mid-Size Business)

By: 

DEBORAH H. DELGADO
Senior Attorney (LMSB)

Attachment:

Two recommended versions of Form 2045

cc: CC:PA:CBS:B03 (w/ attachments and copy of August 20, 2001, request for advice)